

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

Hearing Dates: February 13 and 15, 2002

**Subject Matter of
Proposed Regulations:** Grounds for Disciplinary Action:
1. Inflatable Restraint Systems; Vehicle Airbags.
2. Commissions, Consideration, Inducements, or
Referral Fees; Towing Services.

Sections Affected: §§ 3367 and 3368, Title 16, Division 33, Chapter 1,
Article 8, California Code of Regulations.

Problem Addressed:

1. Section 27317 of the Vehicle Code provides that it is a misdemeanor for any person to knowingly install or reinstall, or distribute or sell, any airbag that has been previously deployed. The penalty for such crime would be a fine of not more than \$5,000, or a jail sentence of one year, or both. While a violation of Section 27317 committed by a registrant of the Bureau of Automotive Repair (Bureau) should be considered a substantially related crime, it is not specifically a cause for administrative disciplinary action. In any event, a criminal conviction would be required in order to pursue administrative discipline.
2. Section 12110 of the Vehicle Code provides that it is a misdemeanor for any repair shop to accept or pay any thing of value to a towing service or an employee of a towing service, as a commission, consideration, referral fee or inducement, for the delivery of a vehicle to the shop. The penalty for such crime would be a fine of not more than \$5,000 or \$10,000, or a jail sentence of six months or one year, or both a fine and a jail term. While a violation of Section 12110 committed by a registrant of the Bureau of Automotive Repair (Bureau) should be considered a substantially related crime, it is not specifically a cause for administrative disciplinary action. In any event, a criminal conviction would be required in order to pursue administrative discipline.

Specific Purpose of Regulatory Proposal:

1. Through the adoption of Section 3367 of Title 16 of the California Code of Regulations, Bureau registrants would be placed on notice that the installation or reinstallation, or sale or distribution of previously deployed airbags is prohibited. Further, the proposed regulation would specifically make such installation, sale or distribution by a registrant a cause for administrative disciplinary action. However, a criminal conviction would not be required in order to pursue administrative discipline.

It is intended that, by eliminating a significant market for deployed airbags, the rise in inappropriate installations may be reduced or eliminated, thereby protecting the public health safety and welfare.

2. The proposed action would add Section 3368 to Title 16 of the California Code of Regulations specifically making it a cause for disciplinary action for a Bureau registrant to accept or pay any thing of value to a towing service or an employee of a towing service, as a commission, consideration, referral fee or inducement, for the delivery of a vehicle to the shop. It would further provide that the administrative discipline would be in addition to, and not a limitation on, any other form of discipline or penalty provided for by law. In other words, a Bureau registrant could be subject to criminal prosecution as well as administrative discipline. However, a criminal conviction would not be required in order to pursue administrative discipline.

The proposed action is intended to help dissuade and combat the frequency of this illegal activity and the increasing violence associated with it. As a result, the inflated costs to directly affected consumers resulting from the illegal activity should be substantially reduced or eliminated.

Factual Basis:

1. It has come to the attention of the Bureau of Automotive Repair (Bureau) that there is an increasing incidence of the reinstallation of previously deployed airbags by automobile repair shops, auto body shops, and used vehicle dealers. Once an airbag has been deployed, however, it cannot be reinstalled to function properly. Drivers and passengers of vehicles with such defective inflatable restraint systems are not protected in the event of an accident.

It has been reported that some repair shops encase the previously deployed airbag in a seemingly appropriate cover and reinstall it in a customer's vehicle. The cost to the shop may be minimal; perhaps as little as \$50, but the unsuspecting customer may be billed for the full cost of a new system. An airbag can cost as much as \$2,500 to replace, making it the single most expensive item to replace in a minor front-end collision. Cost is really not the primary issue though; safety is. Of course, no one is going to know that there is a problem until there is a crash and the airbag fails to deploy and do its job.

In recognition of this growing problem, the Legislature enacted, and the Governor signed into law, Assembly Bill 1471 (Havice, et al., Chapter 449, Statutes of 1999), which added Section 27317 to the Vehicle Code.

2. The Bureau has become aware of the problem of unauthorized tow truck drivers, that do not participate in a rotational program conducted by the CHP or local law enforcement, who drive around monitoring law enforcement radio frequencies searching for traffic accidents or disabled vehicles. These drivers then try to convince the stranded motorist to authorize the vehicle to be towed to a repair facility with which the tow truck driver has negotiated an illegal agreement. The tow truck driver is compensated by the shop, over and above the towing fee paid by the motorist, for diverting and delivering the vehicle to the shop. As a

result, repair costs for the affected consumers are frequently inflated when vehicles are improperly diverted in this fashion.

This illegal activity takes place so frequently and is so lucrative that the Legislature has recently increased the misdemeanor penalties in an effort to dissuade and combat the practice. Assembly Bill 2729 (Wesson, Chapter 641, Statutes of 2000) increases the fines and jail terms for violations of Vehicle Code Section 12110, and in addition provides for the suspension of the offending tow truck driver's license and impoundment of the tow truck. While the magnitude of the problem is not precisely known, the National Insurance Crimes Bureau has stated that the "Los Angeles area has a very serious problem with tow operators who act as runners or cappers for unscrupulous repair facilities." The Automobile Club of Southern California also contends that "(b)andit tow truck drivers, unauthorized drivers that cruise city streets looking for accident victims or vehicle breakdowns, have grown from an industry nuisance to a costly threat for motorists and law enforcement."

There is apparently an increasing level of violence associated with these activities as well. In February 1999, the Los Angeles Police Department arrested one tow truck driver on suspicion of murder for the beating death of another tow truck driver. The beating apparently resulted from a dispute over a towing customer.

Underlying Data:

None.

Business Impact:

This regulation will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

No reasonable alternative has been considered or identified.